

COPY

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK-----X
ROCKLAND VENDING CORP.,

Plaintiff,

-against- 07 CIV 6268 (WP) (MPF)

ROXANNE CREEN,
sued in her individual capacity,
MARSHA F. RILEY,
sued in her individual capacity,
STEWART KIDDER,
sued in his individual capacity,

Defendants.

-----X
Date: November 15, 2007
Time: 11:52 a.m.
Place: 235 Main Street
Poughkeepsie, New York

DEPOSITION OF STEWART KIDDER,

a Defendant in the above-captioned matter, held pursuant to
Agreement, at the above time and place, before Gail M.
Sherry, CRR, RPR, RMR, a Notary Public of the State of
New York.

COURT REPORTING ASSOCIATES, INC.
1699 Route 6; P.O. Box 113
Carmel, New York 10512
(845) 225-00242
3 APPEARANCES4
5 SUSSMAN & WATKINS
6 Attorneys for Plaintiff
7 40 Park Place
8 P.O. Box 1005
9 Goshen, New York 10924
10 BY: MICHAEL H. SUSSMAN, ESQ.11
12 STATE OF NEW YORK
13 OFFICE OF ATTORNEY GENERAL
14 Attorney for Defendants
15 235 Main Street
16 Poughkeepsie, New York 12601
17 BY: DANIEL SCHULZE, ESQ.18
19 ALSO PRESENT:

20 Michael Freed

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3 STIPULATIONS

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5 IT IS HEREBY STIPULATED AND AGREED, by and between the
6 attorneys for the respective parties hereto, that the
7 sealing and filing of the within deposition be waived.8
9
10 IT IS FURTHER STIPULATED AND AGREED that this
11 deposition may be signed and sworn to before any officer
12 authorized to administer an oath with the same force and
13 effect as if signed and sworn to before the officer before
14 whom said deposition is taken.15
16
17 IT IS FURTHER STIPULATED AND AGREED that all
18 objections, except as to form, are reserved to the time of
19 trial.20
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254
2 STEWART KIDDER,
3 having been first duly sworn by Stacie Gero, a
4 Notary Public of the State of New York, was
5 examined and testified as follows:
6 * * * * *
7 EXAMINATION BY MR. SUSSMAN:
8 Q. Please state your name and address for the
9 record.
10 A. Stewart Kidder, S-T-E-W-A-R-T, K-I-D-D-E-R.
11 MR. SCHULZE: He can be served through
12 our offices.
13 Q. Mr. Kidder, you're here today for a
14 deposition, which means, in essence, I'm going to be
15 asking you a single question at a time.
16 A. Okay.
17 Q. Assuming that you hear and understand that
18 question, please answer that question. If for some
19 reason -- and there's a fan here that vacillates and
20 sometimes is louder than others -- if you don't hear or
21 for any other reason don't understand the question,
22 indicate that and don't answer the question. It's
23 important that you only answer questions you do
24 understand.
25 A. Okay.

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2 Q. You'll have an opportunity after the
3 transcription is completed to read the testimony.
4 Again, you'll have a chance then to make any corrections
5 that are necessary, if any corrections are necessary.
6 A. Okay.
7 Q. You have to answer, as you're doing, verbally.
8 Don't gesticulate or otherwise nod, et cetera.
9 A. Yep.
10 Q. If you need a break, you'll be able to take a
11 break. And if there's any reason for you to confer with
12 counsel, you can do that, as long as there's no question
13 pending. Please answer any question that's pending.
14 Okay?
15 A. All right.
16 Q. Do you work for DOCS?
17 A. I do.
18 Q. How long have you done that?
19 A. Twenty-one years. Since 1986.
20 Q. What's your educational background?
21 A. I have an associate's degree in forestry.
22 Q. When did you earn that?
23 A. I graduated in 1964.
24 Q. From what institution did you get the degree?
25 A. Paul Smith's College, Paul Smiths, New York.

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2 Q. What county is that in?
3 A. That is in -- it's not in Essex. I think it's
4 Franklin County. It's pretty close to the line there.
5 Q. Is that the area of the state that you're
6 from?
7 A. No. My home is -- my original home is in
8 Maine.
9 Q. Okay. In 1986 when you first started working
10 for DOCS, what did you do?
11 A. I was a Budget Analyst. I started as a -- I'm
12 trying to remember now. I think I started as a Facility
13 Planner 1, but that was only for several months.
14 Q. Okay.
15 A. And then I became a Supervising -- no. Then I
16 became an Associate Budget Analyst. I have to remember
17 all the titles here.
18 Q. Associate Budget Analyst for DOCS dealing with
19 the construction of DOCS' budget or --
20 A. Yes, capital construction budget.
21 Q. How long were you involved in that sort of
22 work?
23 A. Approximately 13 years.
24 Q. What position did you hold after those 13
25 years?

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2 A. Director of Support Operations, my current
3 position.
4 Q. Who do you report to in that position?
5 A. In that position, right now -- we've had
6 changes -- I report to Assistant Commissioner David
7 Williams.
8 Q. Have you always reported to an assistant
9 commissioner level?
10 A. No, I reported to a Deputy Commissioner prior
11 to this new administration.
12 Q. So let's just say May when some of these
13 events occurred, May of '07, who are you reporting to
14 then?
15 A. I was reporting to the Deputy Commissioner.
16 Q. What was that person's name?
17 A. Gayle, G-A-Y-L-E, Haponik, H-A-P-O-N-I-K.
18 Q. Was your office in Albany?
19 A. Yes.
20 Q. As Director of Support Operations, what did
21 you do every day?
22 A. What do I do every day? Well, first off, my
23 division is responsible for many things, whatever it
24 takes to support an agency of our size. Our main
25 functions are purchasing for Central Office. We also do

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2 a lot of large purchases for facilities around the
3 state, items that may be common to all facilities;
4 security equipment, that type of thing.
5 Fleet vehicle management. We manage all the
6 fleet vehicles in the agency.
7 Quartermaster operations. That's all the
8 uniforms and supplies for over 22,000 correction
9 officers. We maintain a warehouse, central
10 quartermaster.
11 Inmate clothing. That's a state shop -- which
12 there is a state shop in every facility in the state.
13 Commissaries, which are at most of our
14 facilities state-wide.
15 Housekeeping and environmental. That
16 consists, from my office, primarily of audits. Every
17 facility is audited once a year by our housekeeping
18 supervisor. Those are sanitation audits. Housekeeping
19 sanitation audits.
20 Let's see what else. Those are really the
21 major functions. We do have some other responsibilities
22 that don't fall under anyone else, so they end up at
23 Support Operations.
24 Just as an instance, inmate catalogue vendors.
25 That is handled directly by each of the facilities. We

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2 just maintain a disapproved list. If vendors are
 3 disapproved for some reason, we disseminate that
 4 state-wide so all the facilities are aware of the
 5 problem.

6 I think those are the major things.

7 Q. How is your division organized? Do you have
 8 units? Departments?

9 A. We do have units. They're not --
 10 operationally they function that way. There isn't any
 11 really hard-and-fast structure, okay, but we do have --
 12 we have a Purchasing Unit. We have a Vehicle Management
 13 Unit. We have Quartermaster.

14 Q. And you've run this since '99?

15 A. '99, yes.

16 Q. Do you have a list of approved vendors?

17 A. I'm not sure what you mean by "approved
 18 vendors." What kind of approved vendors?

19 Q. A company that wants to do business with
 20 DOCS -- and from what you've described there seems to be
 21 a fair number of places where a company might do
 22 business with DOCS -- is there a process by which
 23 they're vetted to determine whether they can or can't do
 24 business with DOCS?

25 A. The only way would be if they are on a -- I

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2 guess you would call it a disapproved vendors list
 3 maintained by the Office of the State Comptroller. We
 4 do not have any approved vendors list. We don't
 5 maintain anything like that.

6 Q. So when DOCS, through your office and through
 7 the facilities, engages in some form of bidding process
 8 for a supply -- take vending machines, if you want; take
 9 any supply -- and you get a bid from a company, whose
 10 responsibility is it in this structure to determine
 11 whether to accept or not accept that bid?

12 A. That would be our Senior Purchasing Agent.

13 Q. So the Senior Purchasing Agent is in Albany?

14 A. Yes.

15 Q. So the decision whether to accept a low bid at
 16 a facility is not the facility's decision; is that
 17 accurate?

18 MR. SCHULZE: Objection.

19 A. No, that is not accurate. The facilities do
 20 administer their own bids. Okay. They do their own
 21 bidding. The only thing we do are Central Office. We
 22 also do some large items for the facilities where they
 23 use -- say, for instance, photocopiers. We do the
 24 photocopiers annually.

25 Q. So you do photocopy bids, and the photocopies

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2 that are thereby procured may be distributed to
 3 facilities around the State?

4 A. That's correct. Same thing with vehicles.

5 Q. But vending machines are bid at the facility
 6 level?

7 A. At the facility, yes.

8 Q. And is the decision about which vending
 9 machine company to use then made at the local level?

10 A. Yes, it is.

11 Q. Is there any approval process at your level --

12 A. No.

13 Q. -- for that?

14 A. No. None.

15 MR. SCHULZE: Be careful to let him
 16 finish his question before you answer. Sometimes he's
 17 not going where you think he is.

18 THE WITNESS: Okay.

19 BY MR. SUSSMAN:

20 Q. Now, once a contract is bid -- and let's,
 21 again, stay with the detail here of a vending machine
 22 contract -- and it's bid to a particular facility, what
 23 role, if any, does your office in Albany have with
 24 regard to that contract? If any.

25 A. None. The only -- I'll clarify that. The

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2 only involvement we have with any vending machine
 3 contracts is that if a facility contacts us for some
 4 advice; but other than that, we really don't have
 5 anything to do with vending machine contracts.

6 Q. Again, to the extent you know the answer to
 7 this -- and if you don't know, you can say you don't
 8 know -- is the facility under some DOCS rule to vet or
 9 investigate in a certain way those who have filed a bid,
 10 or is that up to the facility and its purchasing unit?

11 A. No, that's up to the facility.

12 Q. In May of 2007, what did Nanette Ferri do for
 13 you?

14 A. She is the Assistant Director of Support
 15 Operations.

16 Q. Was she a direct report to you --

17 A. Yes.

18 Q. -- at that time?

19 Did she have responsibility for particular
 20 parts of the duties you explained earlier, or was she
 21 assistant for everything?

22 A. She's assistant for everything, but her -- I
 23 guess her main expertise -- well, she has a lot of
 24 expertise. I shouldn't say that. But she -- one of her
 25 direct duties is to oversee all the purchasing in our

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2 division.

3 Q. All right. Do you know Mr. Freed?

4 A. Not -- he -- as we were coming in the door, he
5 said that we had met at our training academy at some
6 point. I really don't recall it.

7 Q. Okay.

8 A. We may have.

9 Q. Did you ever have any phone contact with

10 Mr. Freed?

11 A. Yes.

12 Q. Do you know when that first started?

13 A. Honestly, I don't. I remember having, you
14 know, at least a couple telephone conversations with
15 him.16 Q. Okay. Before this particular controversy
17 developed in May, do you have any memory of Rockland
18 Vending and any business dealings that you had with
19 them?20 A. Not really. I mean, like I say, I remember
21 speaking to a Mr. Freed a couple of times on the phone.
22 At one point I think he was asking me to intervene. He
23 was looking for some assistance in his people accessing
24 one of our facilities in New York City, and I explained
25 to him, I mean, that's facility operation. It isn't my

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2 place to intervene. They're responsible for their own
3 security and their own facility operations. I did, I
4 believe, make a phone call to the facility and ask them,
5 you know, please try to work with this company, you
6 know, but that was all.

7 Q. Was this Lincoln?

8 A. I'm going to say --

9 Q. If you don't remember, that's fine.

10 A. I think it was Fulton, but I'm not positive.
11 No, I don't think it was Lincoln. I believe it was
12 Fulton.

13 Q. Do you remember what the issue was?

14 A. I think the issue was timing on Rockland's
15 deliveries to the facility.16 Q. Before this situation arose in May of '07, do
17 you have any other memories of dealing with Freed
18 directly other than around what you assume to be Fulton?19 A. Not really. Like I say, I know that we had at
20 least a couple of telephone conversations. I really

21 don't remember the details.

22 Q. All right. Does your Support Operations unit
23 oversee vending machine contracts in any form or fashion
24 that you know of?

25 A. The only way would be if -- like I said

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2 earlier, if a facility calls us for advice like they
3 would on any contract. I mean, they do it on commissary
4 contracts. They may do it on vending machine contracts.5 Q. But there's no process of monitoring the
6 contracts that your office generally engages in?

7 A. Not with vending machines, no.

8 Q. If you're called, someone in your office will
9 perhaps offer advice.

10 A. That's all, yes.

11 Q. With regard to Ms. Ferri and you, did
12 Ms. Ferri have a process or a practice of reporting to
13 you on a regular basis, or did you not speak frequently
14 about work? How does that work?15 A. No, well, we speak frequently. I mean, we
16 have -- as you can imagine with all of our
17 responsibilities, we have a very busy office, and we
18 talk about various things during -- you know, every day
19 during the day.20 Q. Are there other assistants, or is she the only
21 assistant?

22 A. I have a Deputy Director.

23 Q. So the Deputy is between you and Ms. Ferri?

24 A. Between myself and Nan Ferri.

25 Q. What's that person's name as of May?

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2 A. His name is Mark Shepard, S-H-E-P-A-R-D.

3 Q. Do you have any recollection of Ms. Ferri
4 bringing to your attention any issues involving Rockland
5 Vending?6 A. The only thing I recall that she did say --
7 and I couldn't tell you when it was -- there were some
8 problems with payments from Rockland. She was getting
9 calls from several facilities that they had a lot of
10 overdue commissions.11 Q. Is that the kind of report that you would get
12 from her periodically in general, or is that an unusual
13 report?

14 A. No, that would be in general.

15 Q. What did you do concerning that, if you
16 remember, if anything?17 A. Nothing. I mean, but I would have told her,
18 you know, let the facility handle it.19 Q. There's a standard contract regarding vending
20 machines of three years subject to renewals, which would
21 extend out to five years, two renewals. Do you have any
22 awareness of that?

23 A. I know that that exists, yes.

24 Q. If you know, does Ms. Ferri play a role in
25 deciding whether to renew or not renew in those

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2 situations?

3 A. No.

4 Q. Does your office play any such role?

5 A. No.

6 Q. So from your point of view, that would be a
7 decision made at the local level, facility level?

8 A. Yes.

9 Q. Does your office get notified one way or the
10 other as to whether there's a renewal or not, if you
11 know?12 A. In a normal course of business, I would say
13 no. I mean, we may or may not if someone made a phone
14 call, but not as a normal --

15 Q. But in the normal course of business.

16 A. No.

17 Q. This dispute arose on or around May 11th --
18 when I say "this dispute," I mean what brings us here --
19 arose on or around May 9th when at the facility, a
20 workman from Rockland Vending came and sought to deliver
21 product. Do you have any knowledge of this dispute from
22 then on? Have you heard anything about it?23 A. Right immediately after that I was made aware
24 that, you know, this did happen.

25 Q. Let me ask you this question. Before the

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2 events of May 9th -- we'll get to those events in a
3 little while -- were you made aware that the facility
4 intended to take the monies out of the machine?5 A. The only thing that I recall -- and I'm not
6 sure if I received a phone call or if Nan Ferri received
7 the phone call from Shawangunk, asking if they could
8 retain -- when Rockland Vending came to collect the
9 money from the machines, could they retain their
10 percentage at that time. And I either told the facility
11 or I told Nan Ferri that that had to be referred to
12 counsel's office. I could not answer that question. I
13 didn't know if they had a right to do that or not.14 Q. So the question that you heard was whether
15 they could retain their percentage?

16 A. Yes.

17 Q. And did you hear that either directly from
18 someone at the facility or from Nan Ferri; is that what
19 you're saying?20 A. Yes. I can't remember if it was a phone call
21 from the facility or if she had told me.22 Q. When you use the word "could they retain their
23 percentage at that time," was that what was told to you?

24 MR. SCHULZE: Objection.

25 Q. Or was something else -- I'm trying to make

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2 sure I understand what language you heard, if you know.

3 A. I don't really recall specific language.

4 Q. Had you ever had a request like that before?

5 A. Not that I ever recall, no.

6 Q. And did you learn as to what guidance was
7 given by counsel, if any?

8 A. I did after the fact.

9 Q. What guidance was given?

10 A. Well, all I know is what I was told.

11 Q. Who told you something?

12 A. I can't remember who told me, if it was -- and
13 it could have been Nan Ferri at the time that said, yes,
14 our counsel's office had advised the facility that they
15 could keep money from the machine when it was collected
16 up to the amount that was owed to them in past
17 commissions and had not been paid.18 Q. Do you know whether there was any accounting
19 as to what was owed to them at that point?20 A. I don't know. Only the facility would have
21 that information. I don't know.22 Q. Did the counsel's office speak with you about
23 this matter?

24 A. Not that I recall, no.

25 Q. In or around the same time you're having the

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2 conversations you just recounted, did you speak to
3 Mr. Freed?

4 A. I don't recall that I did, no.

5 Q. You don't recall any call from him inquiring
6 about your state of knowledge about this and whether you
7 had approved it?

8 A. No. I don't recall that.

9 Q. Do you remember speaking with anyone from
10 Rockland Vending about this in or around that time?

11 A. No, I really don't.

12 Q. Just so I'm clear, your memory at this point
13 is you didn't speak with anyone from the legal counsel
14 about this matter, one way or the other?15 A. I don't believe so. It was just left that the
16 facility was going to contact our counsel's office for
17 advice.18 Q. The day this happened, there was a report made
19 to the New York State Police regarding this matter. Did
20 you get information concerning that?21 A. After the fact, I was told that by someone;
22 and, again, probably it was Nan Ferri. Probably the
23 facility had told her that. But that was all the
24 information I had.

25 Q. Did anyone from the State Police make contact

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2 with you?

3 A. No. Not at all.

4 Q. And did you have any contact on your
5 initiative with anyone from the State Police?

6 A. None. Nope.

7 Q. Not down in the New Paltz area or in Albany?

8 A. No.

9 Q. And Ms. Ferri indicated this to you around the
10 time it was going on, as far as you know?

11 A. As far as I know, yes. It was after -- after
12 the fact.

13 Q. So after May 9, May 10, May 11, that time
14 period, did you have conversations with any of the other
15 facilities about what had occurred?

16 A. I did not, no.

17 Q. Do you know whether Ms. Ferri did?

18 A. I don't know.

19 Q. Did any of the facilities make contact with
20 you with regard to what had occurred?

21 A. No.

22 Q. What about with regard to Rockland Vending?

23 Did you give any directions with regard to Rockland
24 Vending to any of the other facilities?

25 A. No.

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2 Q. So after this incident occurred and you
3 received these reports which you've explained about the
4 different events, did you have any contact with Rockland
5 Vending whatsoever?

6 A. None.

7 Q. And what about with regard to Rockland
8 Vending, did you have any contact with any of the
9 facilities at all?

10 A. No, I did not.

11 Q. Did you give any directions with regard to
12 Rockland Vending to Ms. Ferri?

13 A. Not that I recall, no.

14 Q. Do you have any knowledge of the Office of
15 State Comptroller's review of contracts at Eastern
16 Correctional Facility in the vending area?

17 A. I don't believe so, no. Not that I recall.

18 Q. Did you direct Ms. Ferri at some point in May
19 to make contact with all the correctional facilities for
20 the purpose of finding out the status of Rockland
21 Vending?

22 MR. SCHULZE: May of what year?

23 MR. SUSSMAN: 2007.

24 A. I don't recall that I did, no. I mean, she
25 may have done that.

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2 Q. Did you direct her to? That was the only
3 question.

4 A. No.

5 Q. Did she give you any kind of report on what
6 she found?

7 MR. SCHULZE: Objection.

8 A. (No response).

9 Q. You say she may have done that, so I'm asking
10 you, do you have any recollection of getting a report
11 from Ms. Ferri about the status of Rockland Vending at
12 various facilities in May?

13 A. She may have told me verbally, but, no, no
14 report that I recall.

15 Q. With regard to the Otisville facility -- you
16 know there's a correctional facility in Otisville?

17 A. Yes, I do.

18 Q. Did you play any role in discussions with
19 folks at Otisville about the Rockland Vending contract?

20 A. Not that I recall. I don't believe so.

21 Q. What about Lincoln Correctional Facility?

22 A. No, I don't believe I did.

23 Q. Did Ms. Ferri bring you any information about
24 Otisville that you can remember?

25 A. Not that I recall.

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2 Q. What about Lincoln?

3 MR. SCHULZE: We're talking about vending
4 contracts?

5 MR. SUSSMAN: Yes, vending contracts in
6 the period of the spring of '07. I'm asking the
7 gentleman whether Ms. Ferri conveyed to him anything
8 about the status of those.

9 A. I remember something came up about Lincoln. I
10 don't really remember the details. Again, I think it
11 was problems with overdue commissions, but I really
12 don't remember the details.

13 Q. We marked earlier a document. I would like to
14 show you that.

15 A. Okay.

16 Q. We'll just walk you through a few of the items
17 in here. The first section is Invitation for Bids for
18 Vending Machine Services.

19 A. Uh-huh.

20 Q. Do you know whether this is a document
21 specific to Shawangunk or in general use in New York
22 State in 2002, 2003, 2004, and on?

23 MR. SCHULZE: Objection.

24 A. I don't know that this is a standard document
25 used by all facilities. It may or may not be. I really

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2 don't know.

3 Q. Are you familiar with this document, this
4 Invitation for Bids?5 A. Not the specific document, but it looks like,
6 you know, most invitations for bids that State agencies
7 prepare.8 Q. And does a document in use at Shawangunk have
9 to be reviewed and approved by your office?

10 A. No.

11 Q. Attached to the exhibit is -- you can look at
12 the back -- is something called Appendix B.

13 A. Yes.

14 Q. Which has a table of contents.

15 A. Yes.

16 Q. Are you familiar with what this document is?

17 A. I'm familiar that the document exists. I
18 don't know all of these terms and conditions. I have
19 seen these before.

20 Q. Does this go with each State contract?

21 A. Yes, it does. All State contracts. To the
22 best of my knowledge.23 Q. As far as you know, does this Appendix B
24 provision govern State contracts?

25 A. Yes. As far as I'm aware.

25

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2 Q. Does your office provide any training for
3 Institutional Stewards with regard to their relationship
4 with vendors?5 A. Not specifically with vendors, no. We do --
6 the only training we do at stewards' conferences, which
7 are held at various times, we usually have some
8 Purchasing staff in attendance, a Vehicle person in
9 attendance to answer any questions that they may have.
10 It isn't -- nothing that would be considered detailed
11 training. They're there to assist the facilities.12 Q. Do you know whether this Appendix B document
13 which I had asked you to look at a moment ago which is
14 at the end of Exhibit 1, do you know whether that
15 document is provided to the Stewards by your offices for
16 inclusion in each contract?

17 A. Not by our office.

18 Q. Do you know how they would get that document?
19 A. Probably from the State Comptroller's office,
20 I would imagine. Or I'm sure it's on-line these days.
21 I'm sure they can print them off.22 Q. Does your office give the Stewards a direction
23 to include this document with various contracts?24 A. No. That -- that is from the State
25 Comptroller's office.

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2 Q. And you're aware the State Comptroller's
3 office gives that direction?

4 A. Yes.

5 Q. How do you know that?

6 A. Well, because of my involvement over the years
7 with capital construction as part of their purchasing
8 guidelines. It also would be in the New York State
9 Procurement Council Guidelines, which are the governing
10 regulations for all procurements by State agencies.

11 Q. If you look at page 11 of that appendix.

12 A. Okay.

13 Q. There are provisions governing both suspension
14 of work and termination. Do you see that?

15 A. Yes.

16 Q. On the right column.

17 A. Yes.

18 Q. To your knowledge, are your Stewards given any
19 training that advises them with regard to the following
20 of these provisions?

21 A. Not that I'm aware of. I don't know.

22 Q. Do you have any awareness of whether the
23 Stewards are directed to read these provisions and abide
24 by them?

25 MR. SCHULZE: Objection.

1 STEWART KIDDER

2 A. I don't know. Not for my office.

3 Q. Are the Stewards in your chain of command, or
4 are they facility employees?

5 A. No, facility employees.

6 Q. So whatever training the Stewards get is
7 really determined at that level, not your level?

8 A. That's correct. Yes.

9 Q. As far as you know, if you know, does your
10 office have the authority to direct the Stewards as to
11 how to behave with regard to contracts?

12 A. We do not.

13 Q. So the Stewards are responsive and responsible
14 to those at their own facility.

15 A. That's correct.

16 Q. Did you have any conversation with anyone
17 superior to Ms. Creen, the Institutional Steward at
18 Shawangunk, regarding the idea of taking funds directly
19 from the driver? Did you talk to anybody at that
20 facility about that?

21 A. Not that I recall.

22 Q. Do you know who the warden of that facility
23 was in May of '07?

24 MR. SCHULZE: Superintendent?

25 Q. Superintendent, warden.

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1 STEWART KIDDER 29

2 A. They've changed so much.

3 Q. You don't know who it was?

4 A. Not right off the top of my head. I'm sure I

5 knew him.

6 Q. Did anyone from the facility other than

7 Ms. Green, the Institutional Steward, if you know,

8 contact your offices regarding this idea of taking the

9 money directly?

10 A. I'm not sure if the Deputy Superintendent for

11 Administration did or not. I really don't know.

12 Q. That's Knott?

13 A. Knott. Kay Knott.

14 Q. Did you speak to Kay Knott about this?

15 A. I really -- I don't recall if I did or not. I

16 don't remember if she called me about that or not.

17 Q. The most you can say is she might have.

18 A. She may have. I'm not sure.

19 Q. The attorney who was contacted at the general

20 counsel's office, do you know who that attorney was?

21 A. I believe it was George Glassanos.

22 Q. How many attorneys are in that office; do you

23 know?

24 A. I have no idea. There are many.

25 Q. Who told you that he had been involved with

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1 STEWART KIDDER 30

2 this matter; do you know?

3 A. I believe that was Nan Ferri.

4 Q. When a company like Rockland does business at

5 a number of facilities simultaneously -- they have

6 contracts with eight or ten or twelve facilities -- does

7 that change your office's responsibility for monitoring

8 them?

9 A. None. No.

10 Q. You still view it as a contract with each

11 facility, however many they may have?

12 A. Yes.

13 Q. I show you what's been previously marked as --

14 I believe it's Exhibit B. This was at Mr. Freed's

15 deposition.

16 MR. SCHULZE: Defendants' Exhibit B.

17 MR. SUSSMAN: Defendants' Exhibit B.

18 A. Yes. Okay.

19 Q. Have you seen this document before today?

20 A. Yes.

21 Q. Can you tell me why, in light of your

22 relationship to each of these contracts, you wrote this

23 letter?

24 A. The letter actually was written by Nan Ferri.

25 I did sign it because she just informed me that all

COURT REPORTING ASSOCIATES, INC.

1 STEWART KIDDER 31

2 these facilities were having problems with past due

3 commissions. Commissions were not being paid in a

4 timely manner.

5 Q. So that's why you wrote it?

6 A. Yes.

7 Q. Or signed it. Excuse me.

8 A. Yes.

9 Q. Had you ever signed a like letter, to your

10 knowledge or memory?

11 MR. SCHULZE: Objection.

12 A. Not that I recall. I'm not sure. I signed a

13 lot of letters.

14 Q. You don't remember any such letter?

15 A. No.

16 Q. After November 9, 2006, assuming that to be

17 the date you signed the document, did you follow up with

18 regard to this, to your memory?

19 A. Not that I recall, no. I might have -- I

20 mean, Nan Ferri might have told me that commissions were

21 overdue. I'm not sure.

22 Q. Without guessing.

23 A. No. I didn't get involved.

24 MR. SCHULZE: Just in case we had the

25 exhibit wrong, I just want to note this is the November

1 STEWART KIDDER 32

2 9, 2006, letter from Stewart Kidder to Michael Freed

3 that we've been referring to as Defendants' Exhibit B.

4 MR. SUSSMAN: Okay.

5 BY MR. SUSSMAN:

6 Q. Before you wrote this letter, had you any

7 contact directly with Mr. Freed about the facts involved

8 in this?

9 A. I don't recall. I don't believe so, but I

10 really don't recall that I did or not.

11 Q. And just using this letter as an anchor in

12 time, so we're in November of 2006, after that, do you

13 remember whether you had any contact with Mr. Freed

14 about the subject matter of this letter? You directly.

15 A. I don't recall that I did, no.

16 Q. Did Ms. Ferri say anything to you in asking

17 you to sign this letter beyond what you've already

18 remembered and can remember now?

19 A. No.

20 Q. The Superintendent at Shawangunk in May was a

21 guy named Smith?

22 A. Joe Smith.

23 Q. Does that refresh your recollection whether

24 you had any contact with him about this matter in May?

25 A. No. As far as I recall, I didn't have any

COURT REPORTING ASSOCIATES, INC.

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1 STEWART KIDDER
 2 contact with him about this.
 3 Q. Did any other Steward -- I understand you
 4 think you had contact with either the Steward or the Dep
 5 for Administration from Shawangunk either directly or
 6 through Ms. Ferri in May around the time of these
 7 events. I understand that from your prior answers. Did
 8 any other facility Stewards call you in May or June
 9 concerning Rockland Vending?

10 A. I don't believe so. Not that I recall, no.

11 Q. Did any other Stewards, to your knowledge,
 12 contact Ms. Ferri and indicate they too wanted to take
 13 money directly from the driver?

14 A. Not that I'm aware of, but I don't know.

15 Q. Mr. Glassanos is in the Legal Department, as I
 16 understand it; is that accurate, to your knowledge?

17 A. That's correct.

18 Q. Who in the period of time May of '07 was in
 19 charge of that department?

20 A. Anthony Anucci.

21 Q. Did you and Mr. Anucci have any conversation
 22 regarding this self-help?

23 A. Not that I recall, no. No. There wouldn't
 24 have been any reason to.

25 Q. As far as you were advised, the advice came

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1 STEWART KIDDER
 2 from the staff attorney, Mr. Glassanos?
 3 A. That's as far as I know, yes.
 4 Q. You know nothing about any efforts beyond his
 5 level in the Legal Department to check --
 6 A. Not that I'm aware of, no.
 7 Q. In the period from 1999 to May of 2007, had
 8 this issue of self-help come up with regard to any other
 9 contract that you know of?

10 MR. SCHULZE: Objection.

11 A. Not that I ever recall, no.

12 Q. Were you aware -- what I'm asking you --
 13 factually of any precedence for a departmental facility
 14 to say that somebody owed them money and that they would
 15 take the money without going through a court proceeding?
 16 Do you know of any other instances like that?

17 A. I don't know of any.

18 MR. SCHULZE: Objection.

19 Q. In the period since May of 2007 when this
 20 incident occurred, have you learned of any such
 21 incidents?

22 MR. SCHULZE: Objection.

23 A. Not that I'm aware of, no.

24 Q. Have you provided any guidance since May and
 25 this incident to your facilities indicating they should

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1 STEWART KIDDER
 2 not do this?

3 A. No.

4 MR. SCHULZE: Objection.

5 Q. Have you had a Stewards' meeting -- you
 6 mentioned the periodic Stewards' meeting, so have you
 7 had any Stewards' meeting since early May of 2007?

8 A. No, I have not attended any. There was one in
 9 the middle of the state that some of my Purchasing staff
 10 attended, but that's all.

11 Q. Who actually sponsors those? DOCS?

12 A. DOCS, yes.

13 Q. And you have representatives of your unit at
 14 the meetings?

15 A. Yes.

16 Q. Do you know whether this was discussed at that
 17 time?

18 A. I don't know.

19 MR. SCHULZE: Objection.

20 Q. Your answer is you don't know whether the
 21 matter of what happened at Shawangunk with the self-help
 22 was discussed?

23 A. I don't know. It was in a different part of
 24 the state, but, no, I don't know.

25 MR. SUSSMAN: All right. I'm just going

35

1 STEWART KIDDER
 2 to take a five-minute recess and confer and we'll finish
 3 up.
 4 (Brief recess taken.)
 5 BY MR. SUSSMAN:
 6 Q. Mr. Kidder, I want to direct your attention
 7 back to that period in May when you first heard about
 8 this situation. If I understand your testimony
 9 correctly, before anything actually happened at
 10 Shawangunk, either Ferri or somebody from the facility
 11 contacted you and ran this idea by you; is that
 12 accurate?
 13 A. Yes, that's what I recall.
 14 Q. And when they ran the idea by you, as you
 15 recall what you were told, were you advised that the
 16 driver would be detained?
 17 A. No, I wasn't advised of any details.
 18 Q. Were you advised as to how it was proposed
 19 that this would be done?
 20 A. No.
 21 Q. As you recall it, do you recall asking any
 22 questions of whoever was advising you about whatever was
 23 being proposed?
 24 A. No. No. I would just -- I advised them to
 25 contact counsel's office. It was not my decision to

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1 STEWART KIDDER

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2 make.

3 Q. As you understood it, at that point in time
 4 before you referred anybody to counsel's office, did you
 5 have the authority to say, "Don't do it"?

6 MR. SCHULZE: Objection.

7 A. Not really, no.

8 Q. Why don't you think you had that authority?

9 A. Because this is a facility operation and the
 10 facility staff do not report -- I do not have any
 11 authority over the facility staff. They work for the
 12 executives at their facility.

13 Q. Do you have any understanding of why your
 14 office was being apprised of this beforehand, given what
 15 you just said?

16 A. Probably they didn't know who else to call so
 17 they called our office.

18 Q. Mr. Freed has given deposition testimony in
 19 this case, and I want to ask you some questions that
 20 derive from things he said.

21 A. Okay.

22 Q. He told counsel that basically as soon as he
 23 learned of this, the first person he called was you and
 24 he had a conversation with you on the 9th about this.

25 Does that refresh your recollection in any way as to any

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1 STEWART KIDDER

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2 coming on the trucks were not being allowed into a
 3 courtyard which would easily access and service that
 4 facility and they were being delayed, if you will. Do
 5 you have a recollection of him telling you about that?

6 A. I do recall that problem, yes.

7 Q. And he indicates that he contacted you to help
 8 resolve that. Do you remember that?

9 A. Yes. I do remember speaking with him about
 10 that.

11 Q. And he indicates that you informed him, at
 12 least, that you had called the facility and, in fact,
 13 this problem was resolved fairly quickly. Do you
 14 remember that?

15 A. Well, I remember telling Mr. Freed I would
 16 call the facility. Again, these contracts are with the
 17 facilities, not with our office. But I told him that I
 18 would, as a courtesy, contact the facility and ask them
 19 to please try to work with this company. Because I
 20 never know the whole story there.

21 Q. Who did you speak with at that facility; do
 22 you remember?

23 A. I don't recall now.

24 Q. But you do remember making the call?

25 A. Yes. That's one I do remember.

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1 STEWART KIDDER

2 conversation you and he had?

3 A. It doesn't really. I mean, I'm not saying it
 4 didn't happen, but I really don't recall it.

5 Q. And he indicated that he asked you, "Are you
 6 aware of what's gone down at Shawangunk?" and you told
 7 him that you were. Do you have any memory of that?

8 A. Not of the discussion with him, no.

9 Q. And he says he asked you, "Do you agree with
 10 it?" and you said, "I do." Do you remember that?

11 A. No. No.

12 Q. And he says you then told him there was a
 13 lawyer involved and gave him the name of the gentleman
 14 who you have identified today, Mr. Glassanos. Do you
 15 remember doing that?

16 A. No. I don't remember that discussion.

17 Q. So as you sit here today, you remember nothing
 18 about the call at all with Freed?

19 A. Not from Mr. Freed, no, I don't.

20 Q. Including whether it even happened?

21 A. No, I really don't recall it.

22 Q. Okay. With regard to the Fulton Correctional
 23 Facility, you gave some testimony about that earlier. I
 24 just want to follow that up a little bit. Mr. Freed
 25 indicates that his vending machine trucks and the people

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1 STEWART KIDDER

2 been -- could have been at a Stewards' conference that
 3 he was there, but I really don't remember much about it.

4 Q. Do you have any recollection that the Dep at
 5 Coxsackie had invited Mr. Freed to make a presentation
 6 at that conference and that you were, in fact, there?

7 A. I don't recall that he did that, but, again,
 8 I'm not saying that he didn't. I just --

9 Q. But as far as you currently sitting here today
 10 remember, you don't remember conversations with
 11 Mr. Freed at that occasion. You don't remember speaking
 12 with him?

13 A. I really don't recall that, no.

14 Q. In your contact with Mr. Freed around Fulton,
 15 the one that you do remember, do you have any
 16 recollection of saying to Mr. Freed in any way that what
 17 happened at the facilities was not something that you
 18 had any real control over?

19 A. I'm sure I did because that's the case.

20 Q. You're sure you did tell him that?

21 A. Yes.

22 Q. Does Ms. Ferri still work for you?

23 A. Yes, she does.

24 Q. And is she in the same position?

25 A. Yes.

1 STEWART KIDDER

2 Q. Once a facility signs off on a contract,
 3 whether it be vending or anything else, do you know
 4 whether in the ordinary course that goes to the State
 5 Comptroller for review?

6 A. They always go to the State Comptroller for
 7 review and approval. It's not a binding contract until
 8 the State Comptroller approves it.

9 Q. Has your office had any issues with the State
 10 Comptroller reviewing contracts agreed upon by the
 11 facilities, to your knowledge?

12 MR. SCHULZE: Objection.

13 Q. Has the State Comptroller interposed any
 14 objection to any of the contracts which your facilities
 15 forwarded, to your knowledge?

16 MR. SCHULZE: Objection.

17 A. I don't know. Not to my knowledge, I don't
 18 believe.

19 Q. Do you have any information that with regard
 20 to any vending contracts, whether Mr. Freed's or anybody
 21 else's, the State Comptroller's office has raised any
 22 issue?

23 A. They may or may not have. I wouldn't
 24 necessarily know. I mean, that's between the facility
 25 and the State Comptroller.

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1 STEWART KIDDER

2 Q. Well, has any --

3 A. I wouldn't know.

4 Q. Has any such issue come to your office, that's
 5 what I'm asking you, that you do know about?

6 A. I don't believe so, no.

7 Q. Do you have any memory of any contracts that
 8 your office, apart from the facilities, has tried to
 9 engage in or enter into that the State Comptroller's
 10 office has raised questions with?

11 A. Oh, yes. Many times.

12 Q. And that comes to your attention?

13 A. No, that goes to our Purchasing -- Senior
 14 Purchasing Agent's attention.

15 Q. And does the Senior Purchasing Agent come to
 16 you and discuss it?

17 A. Rarely. Usually they handle that themselves.
 18 They're usually, you know, technical questions that can
 19 be answered. No, I normally would not see those.

20 Q. Does the Comptroller's office, to the extent
 21 you know -- and if you don't know, you can tell me --
 22 when they get these contracts for either initial
 23 execution or renewal, do you know what kind of inquiry
 24 they make with regard to it?

25 A. No, I don't.

1 STEWART KIDDER

2 Q. Do you have any knowledge as to whether they
 3 make any inquiry concerning performance issues of
 4 contractors, or is that something the agency does?

5 MR. SCHULZE: Objection.

6 A. I don't know. I mean, the Comptroller may.
 7 Q. You're not sure?

8 A. I'm not sure.

9 Q. With regard to the commissions that are
 10 obtained from the vending machine companies, do all the
 11 contracts in New York State have such provisions that
 12 some share of the profits or proceeds are to be paid
 13 back to the facility in commissions; do you know?

14 A. For vending machines?

15 Q. Yes.

16 A. Yes.

17 Q. Is that the only such contract which has that,
 18 or do you not know?

19 A. I believe it is. I can't think of anything
 20 else that would be applied there.

21 Q. Does your office determine how those
 22 commissions, that is, the amount that comes back from
 23 those contracts, how those commissions are to be used?

24 A. No. That is not our office.

25 Q. Where is that decision made?

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1 STEWART KIDDER

2 A. By our executive staff.

3 Q. Executive staff of DOCS?

4 A. Of DOCS.

5 Q. Just so we're clear, because I want to make
6 sure I understand this, are the commissions from the
7 vending machine contracts used the same way, to your
8 knowledge, in each facility?

9 A. As far as I know, yes.

10 Q. How are they used?

11 A. For specific machines, the commissions are
12 paid to the Inmate Benefit Fund, and some particular
13 machines, depending on their location, are paid to the
14 Employee Benefit Fund.

15 Q. Do you know what the Inmate Benefit Fund is?

16 A. I don't know all of the details, but it's
17 basically money that's available to the inmate
18 population. They have an established committee that
19 guides these. They're used for inmate activities.
20 Might be a family day or cookout I know they have on
21 occasion in the summer. It may be to purchase, I don't
22 know, possibly some recreational equipment that they may
23 want, but it has to be decided by a committee
24 representing the entire inmate population.

25 Q. Do you know if there's a dedicated account,

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1 STEWART KIDDER

2 bank account, which represents the inmate activity fund?

3 A. Yes, there is.

4 Q. And that exists in each facility, as far as
5 you know?

6 A. As far as I know.

7 Q. So as far as you know, there should be records
8 of what balances are in such account at a given time and
9 all?

10 A. Yes.

11 Q. And those are maintained by the Stewards?

12 A. Yes. Or at least by the business office in

13 the facility.

14 Q. Does your office have anything to do with the
15 monitoring of those accounts?

16 A. None. Nothing.

17 Q. And the Stewards don't report to you regarding
18 the status of those accounts?

19 A. No. Not at all.

20 Q. Do you have any recollection of conversations
21 with Ms. Ferri regarding whether Rockland's vending
22 contracts should or should not be renewed in light of
23 any payment problems that you dealt with in your letter
24 which I've given you?

25 A. No. No.

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1 STEWART KIDDER

2 Q. You don't recall any conversations about that?

3 A. No, I don't recall any conversations whether
4 Rockland's contract should be extended or not.

5 Q. Did you receive from Mr. Freed --

6 MR. SUSSMAN: I believe you marked this
7 as Exhibit C at his deposition, but in any event, it's a
8 November 16, 2006, letter.

9 Q. Did you receive that letter from Mr. Freed on
10 or about November 16th of 2006?

11 A. Yes.

12 Q. Do you have a recollection of that letter ever
13 actually reaching you?

14 A. Yes, I'm sure it did.

15 Q. And you're familiar with it?

16 A. Yes.

17 Q. The last line of the letter indicates that, in
18 essence, if there are continuing issues or problems, to
19 contact him. Do you see that?

20 A. Uh-huh.

21 Q. Do you recall if, after that letter, you ever
22 sent him another letter concerning any issue similar to
23 your first letter, the November 9th letter?

24 A. I don't recall that I did, no. No.

25 Q. Do you have any recollection of after this

1 STEWART KIDDER

2 November time period Ms. Ferri raising with you any
3 issues and asking you to send another letter?

4 A. No. I was never asked to send another letter.

5 Q. Do you remember if Ms. Ferri in the period
6 after this period came to you with complaints about
7 Rockland before this issue in May that we've talked
8 about?

9 A. She may have mentioned it. I don't recall any
10 specifics.

11 Q. You don't recall her mentioning it at this
12 point?

13 A. Not really, no.

14 Q. Where a facility is terminating a contract
15 with a vending machine company, does the facility in the
16 normal course advise your office of that?

17 A. They may or may not.

18 Q. There's no protocol?

19 A. There's no protocol, no.

20 Q. Do you know Marsha Riley, M-A-R-S-H-A,
21 R-I-L-E-Y?

22 A. Not personally. I know she's at Lincoln. I
23 never met the woman.

24 Q. Did Ms. Ferri provide you any information
25 about the situation at Lincoln as between Ms. Riley and

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1 STEWART KIDDER

2 her facility and Rockland?

3 A. I remember that she did at the time. Again, I
4 don't remember the details, but I remember there was a
5 problem at Lincoln.6 Q. And you remember being briefed on that by
7 Ms. Ferri?

8 A. Yes.

9 Q. Do you have any knowledge of whether that was
10 before or after the situation at Shawangunk, that you
11 were briefed about Lincoln?

12 A. I believe it was before, but I'm not positive.

13 Q. Do you have any recollection of learning
14 anything about Lincoln and vending machines after the
15 situation at Shawangunk?

16 A. I may have, but I don't recall.

17 Q. Did you review any documents in preparing for
18 today's deposition?

19 A. No.

20 Q. Do you have files at your office with regard
21 to the vending contracts at each of the facilities?22 A. We would not have it for each of the
23 facilities, no.24 Q. You would have just all the contracts
25 together?

1 STEWART KIDDER

2 A. We wouldn't even have all the facility
3 contracts. My guess is we don't have any of them. I'm
4 sure we have a vending machine file for general
5 information.

6 Q. You have not read that in preparing for today?

7 A. No.

8 MR. SUSSMAN: Okay. Thank you very much
9 for coming and answering questions. Counsel's allowed
10 to ask you whatever he would like at this point.

11 MR. SCHULZE: I have no questions.

12 MR. SUSSMAN: Okay. Thank you very much.
13 (At 1:03 p.m., the examination of this
14 witness was concluded.)

15 * * * * *

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1 J U R A T

2 STATE OF)

3 COUNTY OF)

4 I, _____, have read the foregoing
5 record of my testimony taken at the time and place noted in
6 the heading hereof and do hereby acknowledge: (Check one)7 () That it is a true and correct transcript
8 of same9 () With the exceptions noted in the attached
10 errata sheet, it is a true and correct
11 transcript of same

12 STEWART KIDDER

13 Subscribed and sworn to before me
14 this _____ day of _____, 200___.
1516
17 Notary Public
18 My commission expires: _____.

1 E R R A T A S H E E T

2 Please note any errors or corrections on this sheet.

3 Indicate a reason for any change or correction.

4 PAGE \ LINE \ CHANGE \ REASON

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25 STEWART KIDDER

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1
2
3 C E R T I F I C A T E
4
5
6 I, GAIL M. SHERRY, a Certified Realtime Reporter,
7 and Notary Public within and for the State of New York, do
8 hereby certify:
9
10 That the witness whose deposition is hereinbefore
11 set forth was duly sworn by me and that the within
12 transcript is a true and accurate record to the best of my
13 knowledge and ability.
14
15 I further certify that I am not related to any of
16 the parties to this action by blood or marriage and that I
17 am in no way interested in the outcome of this matter.
18
19 IN WITNESS WHEREOF, I have hereunto set my hand.
20
21
22
23
24
25

Gail M. Sherry
Gail M. Sherry, CRR, RMR

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1 Cheryl Fre 46
2 A. From talki .e and
3 Mr. Sussman.
4 MS. SCHULZE: Okay. I don't
5 know if you want to waive privilege
6 here, do you?
7 MR. SUSSMAN: No, of course not.
8 It's not relevant when she
9 found out that fact.
10 (To witness): You don't have to
11 speak. Please don't discuss your
12 conversations you had with me.
13 MR. SCHULZE: I don't want to
14 get into that. Here's all I am
15 getting at, okay?
16 Q. When Roxane talked to you on
17 May 9th, do you know whether or not she had
18 conferred with legal counsel before that?
19 A. I don't know.
20 MR. SCHULZE: Okay. I'm all done.
21

22 CHERYL CREEN
23 Sworn and subscribed to before me
24 this ____ day of _____, 2008.

25 Notary Public	Kathryn MacDonald
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WITNESS:	PAGE
CHERYL FREED	4
EXHIBITS	
None.	
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